

WSR 21-17-051
EMERGENCY RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed August 10, 2021, 11:53 a.m., effective August 10, 2021, 11:53 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The department of labor and industries (L&I) is responding to the 2021 passage of SSB 5254 regarding voluntary use of personal protective equipment (PPE) during a state of emergency, and ESSB 5115, also known as the Health Emergency Labor Standards Act. This rule making creates new sections of WAC, regarding public health emergency reporting and notification requirements for infectious and contagious disease.

The emergency rule includes requirements for when there is a public health emergency for an infectious or contagious disease and as such, the requirements are applicable to COVID-19.

Under the emergency rule:

- Employers with 50 or more covered employees at a workplace or worksite are required to report infectious or contagious disease outbreaks to L&I;
- Employees are not required to disclose any medical condition or diagnosis to their employer;
- Employers, except for certain healthcare employers, are required to notify employees in writing of potential exposures within one business day;
- Employees and contractors must be permitted to voluntarily use personal protective equipment.

Citation of Rules Affected by this Order: New WAC 296-62-600, 296-62-60001, 296-62-60002, 296-62-60003, 296-62-60004, 296-62-60005, 296-62-601, 296-62-60101, 296-62-60102, and 296-62-60103.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.60 [49.17.060].

Other Authority: Chapter 146, Laws of 2021; chapter 252, Laws of 2021.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: SSB 5254 became effective April 26, 2021, and ESSB 5115 became effective on May 11, 2021, requiring L&I to take action to implement both bills. On February 29, 2021, Governor Inslee proclaimed a statewide state of emergency to respond to the emerging spread of COVID-19 which has resulted in a global pandemic, Proclamation 20-05. Subsequent proclamations have been issued related to the pandemic response, including those with restrictions on business activities under Proclamation 20-25, et seq., initially entitled "Stay Home, Stay Healthy" and the most recent amendment titled "Washington Ready" under Proclamation 20-25.14. Washington state is still in the midst of a public health state of emergency battling the COVID-19 pandemic. These emergency rules are necessary to further respond to and diminish the spread of COVID-19, alert public officials to [of] workers' exposure to COVID-19 to allow for adequate responses to out-

breaks, and to reduce the number of outbreaks, keeping Washington workers safe.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 10, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 10, Amended 0, Repealed 0.

Date Adopted: August 10, 2021.

Joel Sacks
Director

OTS-3146.4

NEW SECTION

WAC 296-62-600 Public health emergency reporting and notification requirements for infectious and contagious diseases.

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NEW SECTION

WAC 296-62-60001 Purpose and scope. WAC 296-62-600 through 296-62-60005 provides requirements for the reporting of infectious or contagious outbreaks to L&I's division of occupational safety and health (DOSH) and notification to employees of potential exposures to infectious or contagious diseases during a public health emergency as defined in this rule and consistent with the Health Emergency Labor Standards Act; sections 2 and 3, chapter 252, Laws of 2021. These requirements apply to employers in Washington state during a public health emergency.

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NEW SECTION

WAC 296-62-60002 Definitions. Covered employee. Means any employee that the employer is responsible to record their injury and illness on the employer's OSHA 300 log according to WAC 296-27-02103, including employees from a temporary help service, employee-leasing

service, a personnel supply service if they supervise these employees on a day-to-day basis under WAC 296-27-02103(2).

Public health emergency. Means a declaration or order concerning any infectious or contagious disease, including a pandemic and is issued as follows:

(a) The President of the United States has declared a national or regional emergency that covers every county in the state of Washington; or

(b) The governor of the state of Washington has declared a state of emergency under RCW 43.06.010(12) in every county in the state.

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NEW SECTION

WAC 296-62-60003 General guidelines. (1) WAC 296-62-600 through 296-62-60005 do not require any employee to disclose any medical condition or diagnosis to their employer(s).

(2) WAC 296-62-600 through 296-62-60005 do not alter or eliminate any other reporting obligations an employer has under state or federal laws.

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NEW SECTION

WAC 296-62-60004 Reporting requirements for outbreaks during a public health emergency. Employers must report outbreaks as follows:

(1) During a public health emergency, employers with more than fifty covered employees at a workplace or worksite, must:

(a) Report to L&I's division of occupational safety and health (DOSH) within twenty-four hours of being notified of:

(i) Ten or more test-confirmed covered employees at the workplace or worksite where the test was collected during any period of time the Washington state department of health or a local health jurisdiction communicates to the employer that there is a COVID-19 outbreak at their workplace or worksite; or

(ii) Ten or more test-confirmed employees where the test was collected during any period of time between the following start and end points:

Start: When any two or more test confirmed covered employee cases at the workplace or worksite occur within fourteen consecutive calendar days of each other.

End: Twenty-eight consecutive calendar days have passed since the last positive test result for any covered employee at the workplace or worksite.

(b) Report by calling DOSH 1-800-4BE-SAFE (1-800-423-7233), and using the option to report fatalities, hospitalizations, amputations, or loss of an eye.

Exemptions:

- Employers currently in an outbreak do not need to continue reporting to DOSH until the outbreak has ended.
- Employers in an outbreak who later learn intervening cases were false positives are not required to retroactively reevaluate their outbreak status and report to DOSH. They may continue to act as if they were under the same unbroken outbreak.

(2) For the purposes of this subsection:

(a) "Worksite" or "workplace" means any plant, yard, premises, room, or other place where an employee or employees are employed for the performance of labor or service over which the employer has the right of access or control.

(b) "Test-confirmed" means testing positive for the infectious or contagious disease.

Important: When reporting to DOSH, do not include any employee names or personal identifying information.

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NEW SECTION

WAC 296-62-60005 Notification requirements related to potential exposures. (1) Except for employers who are health care facilities as defined in RCW 9A.50.010, if an employer receives notice of potential exposure, the employer must within one business day of potential exposures:

(a) Provide written notice to all covered employees who were on the premises at the same worksite on the same day(s) as the qualifying individual when the qualifying individual may have been infectious or contagious. The written notice must state that the covered employee may have been exposed to the infectious or contagious disease.

(i) For COVID-19, a qualifying individual is potentially infectious or contagious two days before the qualifying individual felt sick/had symptoms (or, for asymptomatic people, two days before the test specimen collection) until the time the qualifying individual left, and/or was isolated, from the worksite.

(ii) The written notice must be made in a manner the employer normally uses to communicate employment-related information including, but not limited to, personal service, email, or text message if it can reasonably be anticipated to be received by the employee within one business day of sending.

(iii) The written notice must be in both English and the language understood by the majority of the employees.

(b) Provide written notice also to:

(i) The union representative, if any, of any covered employees notified under WAC 296-62-600 through 296-62-60005(1).

(ii) Any temporary help service, employee-leasing service, or personnel supply service employers of a covered employee notified under WAC 296-62-600 through 296-62-60005(1).

(c) The requirements for the manner of written notice and the time for notice in WAC 296-62-600 through 296-62-60005 (1)(a)(iii) apply to notice of union representatives and employers under this subsection.

(2) Any written notice under this section may not include any employee names or personal identifying information.

(3) For the purposes of this subsection:

(a) Notice of potential exposure. Means any of the following:

(i) Notification to the employer from a public health official or licensed medical provider that an employee was exposed to a qualifying individual at the worksite;

(ii) Notification to the employer from an employee, or their emergency contact, that the employee is a qualifying individual; or

(iii) Notification through a testing protocol of the employer that the employee is a qualifying individual.

(b) Qualifying individual. Means any person who has:

(i) A positive laboratory test for the infectious or contagious disease that is the subject of a public health emergency;

(ii) A positive diagnosis of the infectious or contagious disease that is the subject of a public health emergency by a licensed health care provider;

(iii) An order to isolate by a public health official related to the infectious or contagious disease that is the subject of a public health emergency; or

(iv) Died due to the infectious or contagious disease that is the subject of a public health emergency, in the determination of a local health department.

(c) Worksite. Means the building, store, facility, agricultural field, or other location where the qualifying individual worked. "Worksite" does not include any buildings, floors, or other locations of the employer that the qualifying individual did not enter.

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NEW SECTION

WAC 296-62-601 Public health emergency voluntary personal protective equipment usage.

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NEW SECTION

WAC 296-62-60101 Purpose and scope. WAC 296-62-601 through 296-62-60103 provides requirements for employee voluntary use of personal protective equipment during a public health emergency, consistent with chapter 146, Laws of 2021 (SB 5254); Concerning the use of protective devices and equipment during a public health emergency, chapter 252, Laws of 2021. These requirements apply to employers in Washington state during a public health emergency.

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NEW SECTION

WAC 296-62-60102 Definitions. Employee. Means any employee that the employer is responsible to record their injury and illness on the employer's OSHA 300 log according to WAC 296-27-02103, including employees from a temporary help service, employee-leasing service, a personnel supply service if they supervise these employees on a day-to-day basis under WAC 296-27-02103(2).

Public health emergency. Means a declaration or order relating to controlling and preventing the spread of any infectious or contagious

disease that covers the jurisdiction where the individual or business performs work, and is issued as follows:

- (a) The president of the United States has declared a national or regional emergency;
- (b) The governor has declared a state of emergency under RCW 43.06.010(12); or
- (c) An order has been issued by a local health officer under RCW 70.05.070.

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NEW SECTION

WAC 296-62-60103 Voluntary use of personal protective equipment requirements. (1) Every employer who does not require employees or contractors to wear a specific type of personal protective equipment must accommodate its employee's or contractor's voluntary use of that specific type of protective device or equipment, including gloves, goggles, face shields, and face masks, as the employee or contractor deems necessary.

(2) The provisions of subsection (1) of this section applies only when:

(a) The voluntary use of these protective devices and equipment does not introduce hazards to the work environment and is consistent with the provisions of both this chapter, and related rules established by the department of labor and industries (L&I) division of occupational safety and health (DOSH);

(b) The use of facial coverings does not interfere with an employer's security requirements; and

(c) The voluntary use of these protective devices and equipment does not conflict with standards for that specific type of equipment established by the department of health or DOSH.

(3) An employer may verify that voluntary use of personal protective equipment meets all regulatory requirements for workplace health and safety.

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